As regards the deceased cyclist, it is not possible to ascertain from the sketch plan the manner in which he was travelling shortly before the collision. But the driver has stated in his police report that the deceased cyclist was riding in a zig-zag manner in the middle of the road. Even if this was so, he could not have been across the centre line in the wrong half of the road for the brake marks FG would suggest that at the time of the collision the cyclist was still in his own half of the road but fairly close to the centre. From the facts thus inferred and admitted by the driver it is therefore possible to consider the question of liability. The car was travelling on a straight road with its headlights on astride the centre line of the road. There was no suggestion of any other traffic present on the road at the time. There was, therefore, nothing to prevent the driver from seeing at some considerable distance ahead of him an object such as a bicycle, with or without light, which might be on the road. As it happened here, the collision occurred because the driver was unable to take any avoiding action. The clear inference is that he did not see the cyclist until it was too late. Some explanation must be forthcoming from the driver as to why he was unable to take avoiding action. His headlights were bright, the road was about 20 feet wide, there was no other traffic and his car was being driven at about 50 miles per hour. Taking the view, as I do, of the sketch plan and of the damage to the car, it must be held that a *prima facie* case of negligence has been made out against the driver. Needless to say that the appellant/plaintiff has pleaded the doctrine of *res ipsa loquitur*. In different language, the onus was on the driver of the car to prove that he was not negligent. This he attempted to discharge at the trial and the learned trial judge accepted his evidence and that of his witness. If the learned trial judge was right, of course this appeal must fail. But as I have pointed out in some detail earlier in this judgment, the learned trial judge could not be right for the inferences reasonably to be drawn from the sketch plan and the damage to the car would clearly negative any suggestion that the deceased cyclist was crossing the road before the impact as was alleged at the trial. With respect, therefore, I must say the respondents failed to prove that they were not negligent. The strong probability is that the driver of the car was not looking ahead which was his duty to do in the circumstances. That was the implication of his police report when he said he first saw the cyclist 50 feet away. The realisation of this implication had, perhaps, compelled him to change his statement by saying at the trial that he first saw the cyclist 80 yards or 240 feet away.

It remains for consideration whether the deceased cyclist was in any way to blame for the accident. I have given this matter some anxious consideration and it does seem to me from the evidence before the trial court that the cyclist was travelling quite close to the centre line of the road shortly before the collision. Why he was doing that could only be a matter of speculation. But bearing in mind that he was coming from the opposite direction and, therefore, had no difficulty in noticing the headlights of the oncoming car, it was plain carelessness on his part not to have done anything to avoid the risk of being run down by a car which was travelling also in the middle of the road. For this reason, I would apportion liability four-fifths against the driver of the car and one-fifth against the deceased cyclist. Accordingly, this appeal must be allowed.

I will now come to the question of damage which, unfortunately, has not been assessed by the learned trial judge. Special damage has been agreed at $625.00. As regards general damage, the statement of agreed facts would establish that the deceased was 35 years old at the time of the accident. His total earnings in respect of wages, housing, light and water, annual bonus and overtime amounted to $326.92 cents or $326.00 per month. The widow said in evidence that she was given $280.00 per month for food and of this $35.00 would be for the deceased's own keep. There was thus a loss of support amounting to $245.00 per month. On a working life span of between, say, 15 to 20 years, and making allowance for the usual imponderables, 12 years purchase would not be unfair and unreasonable. On that basis, I would assess general damage at $25,000 to which must be added the agree sum of $625. In view of my finding on contributory negligence only four-fifths of this total amount will represent the award to the plaintiff. The deceased left four children, two sons aged 5 and 2, and two daughters aged 6 and 4. Of the amount awarded, $2,000 will go to each of the children and the rest of it all to the widow for herself and the deceased's estate. The children's shares will be held in trust by the Public Trustee until they come of age.

Appellant has appealed in *forma pauperis*. Costs of appeal therefore will be to counsel fixed at $750 including travelling expenses. The appellant shall have four-fifths of the taxed costs in the court below.

Appeal allowed.

Solicitors: *Atma Singh Gill & Co.; Dharmananda & Co.*

KUALA LUMPUR, KLANG & PORT SWETTENHAM OMNIBUS CO. BHD. v. TRANSPORT WORKERS' UNION

[F.C. (Azmi L.P., Gill and Ali F.JJ.) October 12, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 59 of 1970]

Industrial Law — Trade union — Meaning of "statutory authority" — Whether includes a company incorporated and registered under the Companies Act, 1965 — Person employed by statutory authority prohibited from being a member of trade union whose membership is not confined to persons employed by that statutory authority — Trade Unions Ordinance, 1959, s. 27(3).

Companies — Statutory authority — Companies Act, 1965.

Interpretation — Words in enactment must be understood in their proper context — Cardinal rule of construction.

Section 27(3) of the Trade Unions Ordinance, 1959, which was added by the Essential (Trade Unions) Regulations, 1969, provides that no person employed by a statutory authority shall join or be a member of or be accepted as a member by any trade union unless the membership of that trade union is confined exclusively to persons employed by the particular

statutory authority. "Statutory authority" is defined to mean an authority or body established, appointed or constituted under a Federal or State law". The question raised in this case was whether the appellant, which was a company incorporated and registered under the Companies Act, 1965, is a statutory authority as defined in section 27(3) of the Trade Unions Ordinance, 1959, so as to preclude employees of the appellant company from being members of the respondent union. The appellant brought the matter by an originating summons before the High Court for an interpretation of the relevant law and Raja Azlan Shah J. ([1970] 2 M.L.J. 148) held that the words "statutory authority" did not include a company incorporated and registered under the Companies Act, 1965. The company appealed against that decision.

Held, dismissing the appeal: the learned judge rightly construed section 27 of the Trade Unions Ordinance, 1959 in the general context of the Ordinance and he was correct in holding that the term "statutory authority" did not include a company incorporated and registered under the Companies Act, 1965.

Cases referred to:-

(1) *Nuth* v. *Tamplin* (1881) 8 Q.B.D. 247, 253.

(2) *Lumsden* v. *Inland Revenue Commissioners*, [1914] A.C. 877, 892.

(3) *Yeo Peck Chie* v. *K.S. Gill & Co.* [1946] M.L.J. 131, 133.

(4) *Elve* v. *Boyton* [1891] 1 Ch. D. 501.

(5) *In re Smith, Davidson* v. *Myrtle* [1896] 2 Ch. D. 590.

(6) *Canada Sugar Refining Co.* v. *R.* [1898] A.C. 735, 741.

(7) *R.* v. *Vasey* [1905] 2 K.B. 748, 750.

(8) *Salmon* v. *Duncombe* (1886) 11 App. Cas. 627.

(9) *Caledonian Railway Co.* v. *North British Railway Co.* (1880-81) 6 App. Cas. 114, 121, 122.

(10) *Leader* v. *Duffey* (1888) 13 App. Cas. 294, 301.

(11) *Warburton* v. *Loveland* (1832) 2 D. & Cl. (H.L.) 480; 6 E.R. 806.

(12) *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.* (1877) 2 App. Cas. 394.

(13) *Wakefield Local Board* v. *Lee* (1876) L.R. 1 Ex. D. 336, 343.

(14) *The King* v. *Hall* (1822) 1 B. & C. 123, 136.

FEDERAL COURT.

V. C. George for the appellant.

R. Ponnudurai for the respondent.

Gill F.J.: The question for determination in this appeal was whether a company incorporated and registered under the provisions of the Companies Act, 1965 is a "statutory authority" as defined in section 27(3) of the Trade Unions Ordinance, 1959, which was added by regulation 9 of the Essential (Trade Unions) Regulations, 1969 as enacted by P.U. (A) 408 of 1969 on October 9, 1969.

The question arose in this way. As a result of certain claims being made by the respondent union for revision of the terms of service of the employees of the appellant company, there arose a dispute which could not be resolved by the parties. It was therefore referred on the joint request of the parties to the Minister who in turn referred it to the Industrial Court under section 23 of the Industrial Relations Act, 1967.

The respondent union filed its statement of case on February 24, 1969 and the appellant company its reply on April 10, 1969. The case came up for hearing before the Industrial Court on October 7, 1969 but was adjourned for further negotiations between the parties on a certain agreed basis, so that even if there was no complete settlement the points of difference might be narrowed.

As no settlement was arrived at, even though the differences between the parties were ascertained, the case came up for hearing before the Industrial Court on December 1, 1969. At the commencement of the hearing counsel for the appellant company submitted that, as the appellant company was a statutory authority as defined in section 27(3) of the Trade Unions Ordinance, 1959, and since under sub-sections 3(a) and 3(b) of that section the employees of the company were prohibited from becoming members of a trade union which was not confined exclusively to persons employed by it and since any such trade union could not be affiliated to any other trade union or federation of trade unions whose membership was not otherwise so confined, the respondent union had no *locus standi* in the case. The Industrial Court rejected such submission but agreed to an adjournment to enable the company to apply to the High Court for an interpretation of the relevant law.

The matter was brought before the High Court by way of originating summons the hearing of which took place in open court on April 21, 1970. The questions upon which ruling of the High Court was sought were as follows: —

(a) Do the words "statutory authority" include a company constituted under the Companies Act, 1965 for the purposes of section 27(3) of the Trade Unions Ordinance.

(b) If so have the employees of the Kuala Lumpur, Klang & Port Swettenham Omnibus Company Berhad ceased to be employees of the respondent union.

(c) If they have ceased to be members: —

(i) Can the respondent union represent the said employees at the Industrial Court so as cause them to be bound by any decision of the Industrial Court; and

(ii) Is the reference by the Minister rendered void by virtue of the fact that the respondent no longer represents the workmen; and

(d) In the circumstances should the Industrial Court proceed with the hearing of the case before it?

It will be convenient to set out the entire provisions of section 27 of the Ordinance. It reads as follows: —

"27. (1) Subject to the provisions of sub-section (2) of this section, no public officer shall join or be a member of any trade union or shall be accepted as a member of any trade union.

(2) The Yang di-Pertuan Agong may by notification in the *Gazette* exempt from the provisions of sub-section (1) either wholly or subject to such conditions as are in such notification specified any public officers or any category, class or description of public officers and thereupon such public officers shall be deemed to be workmen for the purpose of this Ordinance.

(3) (a) No person employed by a statutory authority shall join or be a member of, or be accepted as a member by any trade union unless the membership of that trade union is

confined exclusively to persons employed by the particular statutory authority.

(b) Any trade union whose membership is confined to persons employed by a statutory authority shall not be affiliated to any other trade union or any federation of trade unions, or consultative or co-ordinating body of trade unions whose membership is not otherwise so confined.

For the purpose of this section, the expression 'statutory authority' shall mean an authority or body established, appointed or constituted under a Federal or State law."

The main argument advanced in the High Court by counsel for the appellant company was that the definition of "statutory authority" in section 27(3) of the Ordinance was couched in such wide terms that, on a literal and grammatical reading of the language used therein, it included a limited liability company incorporated *under* the Companies Act, 1965 and was not to be restricted to the narrower meaning of an "authority" or "body" constituted *by* a Federal or State statute.

The learned judge rejected that argument and answered the main question in the negative. Accordingly, he dismissed the originating summons with costs. His reasons for so doing are set out in his grounds of judgment as follows: —

"The legislature could have inserted the new sub-section (3) as a separate section but they thought fit not to do so. Instead they inserted it as a sub-section of section 27. The intention of the legislature can only be ascertained from the terms of the section itself. Therefore the whole of the section must be looked into, for every section of an enactment is a substantive enactment in itself. It is an elementary rule of construction of a statute that a section of a statute must be read literally unless one of two things occur; either there is some other section which cuts down its meaning or else the section itself is repugnant to the general purview of the Act: (see *Nuth* v. *Tamplin*[1]).

In other words it is certainly a right doctrine to apply that in the consideration of all Acts of Parliament, and that includes the construction of a sub-section, that, unless there is compelling reason for it, words should not be imported into an Act of Parliament either by way of limitation or extension. Is there compelling reason which restricts the meaning and operation of sub-section (3)? I think there is. Sub-section (1) enacts that a public officer as popularly understood is restricted from being a member of a trade union. Sub-section (3) was added so as to include employees who could not be catered under the class of 'public officers' but nevertheless bear the same characteristics. In other words, section 27 as a whole prohibits public officers as popularly understood as well as employees of these public authorities which are outside the scope of 'public services' as defined in the Constitution; e.g. M.A.R.A. from becoming members of trade unions. To put a literal construction on sub-section (3) will be to construe the words 'public officer' and 'persons employed by a statutory authority' in a different sense. That is not the intention of the legislature as can be ascertained from the terms of the whole section itself. The marginal note too, which reads 'membership of public officers', is certainly of consequence in considering the general trend of the section as a whole."

At the hearing of the appeal before us it was contended by counsel for the appellants, on the authority of *Lumsden* v. *Inland Revenue Commissioners*[2] and *Yeo Peck Chie* v. *K. S. Gill & Co.*,[3] that in interpreting the provisions of the Ordinance full effect must be given to the literal meaning of the words. It was further contended that the definition of "statutory authority" is wide enough to include a company constituted under the Companies Act which is a Federal law, that the whole question turned on the construction of the word "under", and that there was no justification for saying that the word "under" in the context of the definition meant "by". *Elve* v. *Boyton*[4] and *In re Smith, Davidson* v. *Myrtle*[5] were cited in support of this contention. Finally, it was contended that the word "incorporated" is defined in the *Shorter Oxford* English Dictionary as "formally constituted". Thus, the gist of these contentions was that the literal meaning of the words must be adhered to, and that it was not wrong to describe the appellant company as a "body" constituted under the Companies Act.

I do not think that there is any substance in any of the contentions made on behalf of the appellant company. As Lord Davey said in *Canada Sugar Refining Company* v. *Reg.*: [6]

"every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter".

In *Rex* v. *Vasey*[7] Lord Alverstone C.J. cited with approval the following passage from *Maxwell* on the Interpretation of Statutes, 3rd ed. p. 319:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

His Lordship then went on to refer to the following statement by Lord Hobhouse in delivering the judgment of the Privy Council in *Salmon* v. *Duncombe*: [8]

"It is, however, a very serious matter to hold that when the main object of a statute is clear it shall be reduced to a nullity, by the draftsman's unskilfulness or ignorance of law."

In *Caledonian Railway Co.* v. *North British Railway Co.*[9] Lord Selborne L.C. said:

"There is always some presumption in favour of the more simple and literal interpretation of the words of a statute, or other written instrument, ... The more literal construction ought not to prevail, if (as the court below has thought) it is opposed to the intentions of the Legislature, as apparent by the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated."

In *Leader* v. *Duffey*[10] Lord Halsbury L.C. said:

"All these refinements and nice distinctions of words appear to me to be inconsistent with the modern view — which is I think in accordance with reason and common sense — that, whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument, and, inasmuch as there may be inaccuracy and inconsistency, you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it. But it appears to me to be arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption to bend the language in favour of the assumption so made."

Did the learned judge in the court below begin by assuming an intention apart from the language of the statute itself, and having made that fallacious assumption did he bend the language in favour of the assumption so made? I do not think so. In arriving at the

answer to the question posed, for the reasons which he has set out in such lucid terms, he construed section 27 as a whole in the general context of the Ordinance. I respectfully agree with both his reasoning and the conclusion at which he arrived on the basis of that reasoning.

It is to be observed that the constitution of a company is contained in its memorandum of association and articles of association, so that its fundamental powers and duties are contained in those documents and not in the Companies Act, 1965 which, subject to certain rules and conditions, merely requires them to be registered. The powers and duties of an authority or body established, appointed or constituted under a statute, on the other hand, are contained in the statute itself, so that it will be correct to speak of a statutory authority as an authority or body established *under* or *by* a statute. For example, it will be correct to speak of the University of Malaya as a body corporate established under or by the University of Malaya Act, 1961. Counsel for the appellant conceded that if the word "by" had been used in place of the word "under" in the definition he would have no leg to stand on, but it would seem clear to me that in the context of the definition the word "under" does mean "by". The basic rule of interpretation is that words used in an enactment must be understood in their proper context.

For the reasons I have stated, we dismissed the appeal with costs.

Ali F.J.: The Kuala Lumpur, Klang & Port Swettenham Omnibus Company Berhad, hereinafter referred to as the company, was involved in an industrial dispute with the Transport Workers' Union (Federation of Malaya), hereinafter referred to as the union. On a joint request by both parties, this dispute was referred to the Industrial Court by the Minister in accordance with the relevant provisions of the Industrial Relations Act 1967. Each party had filed a statement of the case but the hearing of the dispute was adjourned from time to time for reasons which need not concern us here. In December, 1969 when it came up again for hearing, the company sought to challenge the right of the union to represent their employees. This objection was raised following the view taken of the effect of a recent amendment to the Trade Union Ordinance No. 23 of 1959. The company maintain that the expression "statutory authority" as defined in subsection (3) of section 27 of the Ordinance, added recently in October, 1969 by regulation 9 of the Essential (Trade Unions) Regulations 1969 *vide* P.U.(A)408 of 1969, includes companies incorporated under the Companies Act 1965. Statutory authority is defined in the subsection as follows:

"For the purpose of this sub-section, the expression 'statutory authority' shall mean an authority or body established, appointed or constituted under a Federal or State law."

The Industrial Court overruled the objection when it was raised before it but stayed further proceedings on the dispute to enable the company to take the objection to the High Court.

The objection, as expressed in paragraph 8(b) of the company's affidavit, is in these terms:

"That the said definition was couched in such wide terms that on a literal and grammatical reading of the language of the said sub-section the words 'statutory authority' includes a limited liability company incorporated *under* the Companies Act 1965 and is not to be restricted to the narrower meaning of an 'authority' or 'body' constituted *by* a Federal or State statute."

From the words of the objection, the appellant is clearly saying that given a literal and grammatical meaning the words of the definition are wide enough to include a company incorporated under the Companies Act 1965. In the same breath the appellant is also saying that given a narrow or restricted meaning, those words can only include an authority or body constituted by a Federal or State law. To my way of thinking, to give the words a literal and grammatical meaning is to adopt a narrow or strict construction, that is to say, if the words are clear and explicit the courts must give effect to them regardless of the consequences. In *Warburton* v. *Loveland*[11] Tindal C.J. said at page 489:

"Where the language of the Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature."

As opposed to a narrow and strict construction, the words of a statute may be liberally construed by extending the meaning of the words to suit the particular intention or object of the Act. That is sometimes described as the cardinal rule of construction. As stated by Lord Blackburn in *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.*[12] at page 412:

"The tribunal that has to construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand those words it is material to inquire what is the subject-matter with respect to which they are used, and the object in view."

I must confess that I find it extremely difficult to understand the real nature of the appellant's objection.

In dealing with the objection, the learned trial judge has considered the main object of section 27(1) of the Trade Union Ordinance which, subject to subsection (2), is to prohibit public officers or officers of the public or government services from becoming members of a trade union. In the light of that, the learned trial judge came to the view that subsection (3) was added to section 27 solely for the purpose of including a new class of employees of public authorities, who, hitherto, were outside the scope of the prohibition. In other words, read in the context of section 27 as a whole, statutory authority, according to the learned trial judge, can only mean such authority as M.A.R.A. or the like which are public or government institutions. A limited liability company which belongs to the private sector cannot possibly be a public or government institution. To extend the prohibition in section 27 to employees of companies in the private sector is to frustrate the purpose or object of the Trade Unions Ordinance which defines a trade union as an association of workmen employed in a particular trade or occupation or employed in similar trades or occupations. There is, therefore, no doubt that the trial court in this case has applied the correct principle of construction.

In my attempt to probe into the real nature of the appellant's objection, I came across the following words which appear in paragraph 2(d) and (e) of the memorandum of appeal:

"(d) he failed to consider that the crux of the question before him turned on the use of the word 'under' in the definition of the words 'statutory authority' which word in the context used in the definition has a clear and definite meaning.

(e) he interpreted the said definition as if the word 'by' had been used therein instead of 'under'."

From counsel's argument before us at the hearing of this appeal, it was well nigh impossible to know exactly what clear and definite meaning the word "under" has. By itself the word conveys nothing of legal import. It must be read in its proper context. I would understand counsel to mean that this word coming after the words of the definition "established, appointed or constituted" has the same meaning as the word "under" which usually follows the expression "incorporated" when used in reference to a company or companies registered pursuant to the requirements of the Companies Act. Why it should have that same meaning was not clearly stated. Some reliance was placed on a meaning given to the word "incorporate" in the *Shorter Oxford* Dictionary, 3rd Edition, which upon examination does not help the appellant in any way. If I may echo the words of Grove J. in *Wakefield Local Board* v. *Lee*: [13]

"Except in mathematics, it is difficult to frame exhaustive definitions of words;"

Even more clearly was it stated by Abbott C.J. in *The King* v. *Hall*[14] thus:

"Now, the meaning of particular words in Acts of Parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion, on which they are used, and the object that is intended to be attained."

I do not think it would serve any useful purpose for me to elaborate in this way for it is quite clear that there is absolutely no ground on which the appellant's objection can be founded.

I would dismiss this appeal with costs here and below.

Azmi L.P. concurred.

Appeal dismissed.

Solicitors: *Ng Ek Teong, Zain & Selvarajah; Rajendra & Teik Ee.*

CHUA WEE SENG v. FAZAL MOHAMED

[O.C.J. (Sharma J.) October 16, 1970]

[Malacca — Civil Suit No. 38 of 1966]

Practice and Procedure — Res Judicata — Conditions to be fulfilled.

The plaintiff and the defendant had entered into an agreement on January 17, 1962 whereby the plaintiff agreed to erect eight plank houses for the defendant on the latter's land. The payment was to be by advances and instalments. On August 2, 1962 the plaintiff commenced an action in the sessions court in which he claimed the balance due to him including the instalments due up to the end of July 1962 and judgment was given in his favour. Subsequently the plaintiff brought an action in the High Court claiming payments of the balance of the monthly instalments totalling $5,000. The defendant raised the plea of *res judicata.*

Held: the claim for the balance of $5,000 could not be heard in the sessions court and was never before that court and there was no merit whatsoever in the plea of *res judicata* and therefore judgment must be given for the plaintiff.

Cases referred to:-

(1) *Jenkins* v. *Robertson* (1867) L.R. 1 H.L. 117.

(2) *Duchess of Kingston's Case* (1776) 1 Leach C.C. 146; 168 E.R. 175; 2 Smith's L.C. 13th Edn. 644.

CIVIL SUIT.

T. Thalayasingam for the plaintiff.

S. Shunmugam for the defendant.

Cur. Adv. Vult.

Sharma J.: The plaintiff and the defendant entered into an agreement on the 17th day of January 1962 whereby the plaintiff agreed to erect eight plank houses for the defendant on the latter's land. The defendant agreed to pay the plaintiff $6,150 for the construction of these houses. Payment of the contract price was to be made by the defendant in accordance with clause 8 of the agreement which is reproduced below:

"8. Payment shall be made as follows:—

(a) The 1st payment is paid upon signing of this agreement and the amount is $1,000.

(b) When the beams have been erected an advance of $500 to be paid to the 2nd party.

(c) When roofs are covered then another advance of $650 to be paid to the 2nd party.

(d) After one month of completion another advance of $500 to be paid to the 2nd party.

(e) The balance of $3,500 shall be paid by monthly instalments of $250 by 14 months instalments. The monthly instalments shall be paid from 1st to 15th day of each month. If the instalment is not paid accordingly then the 1st party shall be responsible for the compensation incurred by the 2nd party."

The plaintiff had earlier on 2nd August 1962 commenced an action in the Sessions Court, Malacca, being Civil Action No. 49 of 1962 in which he admitted having received a sum of $2,085 from the defendant. The claim of the plaintiff in that action was for $1,065 and not $4,065 (*i.e.* $6,150 - $2,085) as he could then claim only for the instalments which were due up to the end of July 1962. The defendant had in that action filed a counterclaim against the plaintiff. The following issues were by consent of the parties framed by the learned president:

1. Whether the defendant had paid to the plaintiff the sum of $2,565 and not $2,085 as was alleged by the plaintiff.

2. Whether the plaintiff had not completed the work on or before the 18th March 1962 in accordance with the agreement dated the 17th day of January 1962.

3. Whether the plaintiff had not completed the said work in accordance with the specifications.

After hearing the evidence the learned president seemed to have been satisfied that the defendant had